

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

NOTICE OF ISSUANCE OF MANDATE

DATE: June 23, 2006

TO: Norbert G. Jaworski
United States District Court
Southern District of Illinois
Room 142
750 Missouri Avenue
P.O. Box 186
East St. Louis, IL 62202

FILED

JUN 26 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

FROM: Clerk of the Court

RE: 05-3390, 05-3558, 05-3559 & 05-3586
Bradfish, Donald v. Templeton Funds Inc
Kwiatkowski, Vince v. Templeton Growth, et al
Woodbury, Edmund v. Templeton Smaller, et al
Parise, Joseph v. Templeton Funds Inc, et al
05 C 298, Michael J. Reagan, Judge
05 C 299, G. Patrick Murphy, Chief Judge
05 C 301, G. Patrick Murphy, Chief Judge
05 C 300, G. Patrick Murphy, Chief Judge

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

☒ No record filed

☐ Original record on appeal consisting of:

ENCLOSED: TO BE RETURNED AT LATER DATE:

<input type="checkbox"/>	Volumes of pleadings	<input type="checkbox"/>
<input type="checkbox"/>	Volumes of loose pleadings	<input type="checkbox"/>
<input type="checkbox"/>	Volumes of transcripts	<input type="checkbox"/>
<input type="checkbox"/>	Volumes of exhibits	<input type="checkbox"/>
<input type="checkbox"/>	Volumes of depositions	<input type="checkbox"/>
<input type="checkbox"/>	In Camera material	<input type="checkbox"/>
<input type="checkbox"/>	Other _____	<input type="checkbox"/>

Record being retained for use _____ ☐
in Appeal No. _____

Copies of this notice sent to: Counsel of record

☐ United States Marshal
☐ United States Probation Office

NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S.
Court of Appeals for the Seventh Circuit.

Date:

(1071-120397)

RECEIVED

JUN 26 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

Deputy Clerk, U.S. District Court

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

JUDGMENT- WITHOUT ORAL ARGUMENT

Date: May 19, 2006

BEFORE: Honorable FRANK H. EASTERBROOK, Circuit Judge

Honorable KENNETH F. RIPPLE, Circuit Judge

Honorable DIANE P. WOOD, Circuit Judge

DONALD BRADFISCH,
Plaintiff-Appellant,

No. 05-3390

v.

TEMPLETON FUNDS, INC. and
TEMPLETON GLOBAL ADVISORS LTD.,
Defendants-Appellees.

] Appeal from the United
] States District Court for
] the Southern District of
] Illinois.

] No. 05 C 298

] Michael J. Reagan,
] Judge.

VINCE KWIATKOWSKI, EDWARD
WOODBURY and JOSEPH PARISE, JR.,
Plaintiffs-Appellants,

Nos. 05-3558, 05-3559 & v.
05-3586

TEPMLETON GROWTH FUND INC., et al.,
Defendants-Appellees.

] Appeals from the United
] States District Court for
] the Southern District of
] Illinois.

] Nos. 05 C 299

] 05 C 301

] 05 C 300

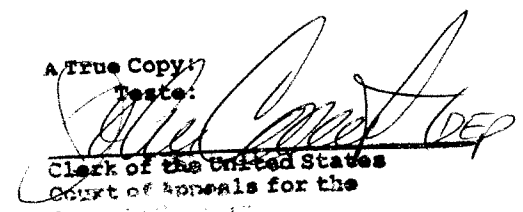
] G. Patrick Murphy,
] Chief Judge.

The judgments of the District Court are AFFIRMED, with costs,
in accordance with the decision of this court entered on this date.

(1060-110393)

A True Copy:

Teste:


Clerk of the United States
Court of Appeals for the

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

CERTIFIED COPY

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 18, 2006
Decided May 19, 2006

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

DONALD BRADFISCH,
Plaintiff-Appellant,

No. 05-3390

v.

TEMPLETON FUNDS, INC. and TEMPLETON GLOBAL
ADVISORS, LTD.,
Defendants-Appellees.

Appeal from the United States
District Court for the Southern
District of Illinois.

No. 05 C 298
Michael J. Reagan, *Judge.*

VINCE KWIATKOWSKI, EDMUND WOODBURY AND
JOSEPH PARISE, JR.,
Plaintiffs-Appellants,

Nos. 05-3558, 05-3559 &
05-3586

v.

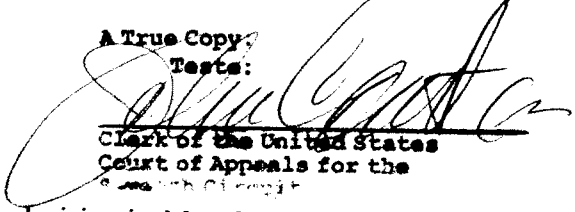
TEMPLETON GROWTH FUND, INC., *et al.*,
Defendants-Appellees.

Appeals from the United States
District Court for the Southern
District of Illinois.

Nos. 05 C 299
05 C 301
05 C 300
G. Patrick Murphy, *Chief Judge.*

Order

A True Copy
Teste:


Clerk of the United States
Court of Appeals for the
Seventh Circuit

These four appeals are governed by the Supreme Court's decision in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 126 S. Ct. 1503 (2006). Although the plaintiffs maintain

Nos. 05-3390, 05-3558, 05-3559 and 05-3586

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that *Dabit* does not control because (in their view) the defendant funds have been negligently managed, they have not sought relief through derivative litigation and therefore cannot take advantage of the exception for that kind of suit in the Securities Litigation Uniform Standards Act of 1998. For direct litigation, labels are not material, as we explained in *Kircher v. Putnam Funds Trust*, 403 F.3d 478 (7th Cir. 2005), cert. granted on other grounds, 126 S. Ct. 969 (2006), a decision that the Supreme Court approved in *Dabit*.

These appeals are not affected by the grant of certiorari in *Kircher*. The Supreme Court limited the writ to a dispute about appellate jurisdiction of appeals by defendants from remand orders under the SLUSA. These defendants did not appeal from the district court's orders in 2004 remanding the suits. They removed again following the decision on the merits in *Kircher*, and the only appeals have been filed by the plaintiffs.

On the authority of *Dabit* and *Kircher*, the judgments are affirmed.